Global Response 2: Golden Eagle

The County received a number of comments regarding the Project's potential impacts on golden eagles (*Aquila chrysaetos*). Some of these comments are addressed in specific responses; this global response is intended to address a number of key issues that were raised in numerous comments.

The golden eagle is not listed under either the California Endangered Species Act (CESA, Cal. Fish & G. Code, § 2050, et seq.) or the federal Endangered Species Act (ESA, 16 U.S.C. § 1531, et seq.). It is, however, a California "fully-protected" species under Fish and Game Code section 3511. Impacts to golden eagles are also regulated under the federal Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668, et seq.) also known as "BGEPA." The golden eagle is among the 85 species covered under the County's Multiple Species Conservation Program (MSCP), as well as the MSCP Subarea Plan that applies specifically to the Project site. In addition, golden eagle habitat is protected in preserves established under the County's Resource Management Plan (RMP), which is integrated into the MSCP. As explained below, the Project is consistent with the MSCP and Subarea Plan and will dedicate significant land to the MSCP regional preserve, as required under the RMP. This dedicated preserve land contains substantial amounts of golden eagle habitat and functions as the Project's primary mitigation measure for impacts to the species. Note also that the proposed Project and Alternative H, as well as the other alternatives discussed in the Final EIR, are consistent with the conditions set forth in the County's Section 10(a) permit as they relate to golden eagle. Accordingly, the Project's full participation in the MSCP not only mitigates the Project's impacts to golden eagle and golden eagle habitat, it provides coverage under BGEPA for any "take" of golden eagle that might occur with implementation of the proposed Project or alternatives.

Summary of Project Impacts on Golden Eagle

As explained in the EIR's **Biological Resources** section, the Project is located within a mapped primary foraging area for golden eagle, although the nearest golden eagle nest and associated territory – known as the "Rancho San Diego" or "San Miguel Mountain" territory – is more than 3 miles from the Project boundary. (**DEIR, Biological Resources, Section 2.3, p. 2.3-22.)** Moreover, the Rancho San Diego/San Miguel Mountain territory has not supported an active nest since 2007 when the nest and nest substrate was destroyed by the Harris Fire. The closest ***active*** nest is approximately 6 miles from the proposed Project's boundary. In short, golden eagle nesting has never been confirmed within 4,000 feet of the development footprint, and nesting is unlikely to occur within that space because suitable nesting substrates are generally lacking. Note that none of the alternatives discussed in the EIR, including Alternative H, would place development within 4,000 of the former nest sites at San Miguel Mountain or any other nests, including the extant nest at Cedar Canyon.

Currently, the Project contains approximately 1,660 acres of suitable golden eagle foraging habitat, of which the Project will permanently disturb 620 acres. An additional 25 acres of impacts to suitable habitat will occur within the Otay Ranch RMP Preserve for allowable uses as discussed in the EIR. Thus, 1,015 acres of golden eagle foraging habitat (61% of the total) will be protected on-site as part of the Project. Per the requirements of the RMP, these 1,015 acres will be conveyed to the Otay Ranch Preserve system and be professionally managed for the benefit of the various plant and animal species that reside in or use that land, including golden eagle. Because the MSCP and RMP previously established the mitigation requirements for participating developments, including this Project and because the 1,015-acre

conveyance to the Preserve complies with the habitat set aside mandates of the MSCP and RMP, the Project's impacts on golden eagle foraging habitat – direct, indirect, and cumulative – are deemed mitigated to a ***less than significant*** level. Note that none of the alternatives discussed in the EIR, including Alternative H, would result in impacts to golden eagle forage habitat greater than those expected under the proposed Project.

The following discussion provides additional information and context for the Draft EIR's assessment of Project-related impacts on golden eagle.

Golden Eagle Characteristics

The golden eagle's distribution extends as far south as North Africa, Arabia, the Himalayas, and to Mexico in North America. The golden eagle is a partial migrant within this distribution, with the northern breeding birds migrating south in the winter and those in more temperate climates remaining within breeding territories year round (Brown and Amadon 1968). In North America, the species breeds from northern Alaska eastward to Labrador and southward in western North America to northern Mexico, and can be found breeding at elevations ranging from sea level to 3,883 meters (11,500) feet above mean sea level (AMSL) (Kochert et al. 2002; Grinnell and Miller 1944).

The golden eagle requires rolling foothills, mountain terrain, and wide, arid, plateaus deeply cut by streams and canyons, open mountain slopes and cliffs, and rock outcrops (Zeiner *et al.* 1990A). In San Diego County, the golden eagle nests primarily in shrublands, including sage/desert scrub, chamise chaparral, and comparatively dense mixed chaparral, as well as occasionally in grassland or woodland areas, where cliffs, rock outcrops or large trees provide suitable nest substrates (Dixon 1937, Scott 1985). During spring and fall migration in the western United States and Canada, the golden eagle migrates primarily along ridgelines and mountain ranges, and may roost and forage in a variety of relatively open grassland, shrubland, wetland, and woodland habitats (Kochert et al. 2002). Similarly, the winter range in the western United States includes a variety of open habitats where human activity is limited, and typically excludes urban, agricultural, and heavily forested areas (Millsap 1981; Fischer *et al.* 1984; Craig *et al.* 1986; Marzluff *et al.* 1997B). The golden eagle also uses sagebrush communities, riparian areas, grasslands, and rolling oak savannahs as habitat (Knight *et al.* 1979; Fischer *et al.* 1984; Hayden 1984; Estep and Sculley 1989).

The favored diet for this species consists of medium-sized mammals such as rabbits, hares, and squirrels, but may include a wide variety of other mammals, reptiles, and birds, and frequently includes carrion, especially during winter (Olendorff 1976; Johnsgard 1990; Kochert et al. 2002).

The golden eagle was formerly considered common within suitable habitats in California (Grinnell and Miller 1944) and is now considered an uncommon resident throughout California (Garrett and Dunn 1981). A major threat to this species is human disturbance in the form of habitat loss, as well as human development and activity adjacent to golden eagle habitat. Mortality attributed to increased development includes collisions with vehicles, power lines, and other structures; electrocution; hunting; and poisoning (Franson *et al.* 1995). Golden eagles tend to avoid developed areas. If nests are disturbed by humans, the eagles may abandon their nests in early incubation (Thelander 1974).

The County-Adopted Otay Subregional Plan (SRP) and Otay Ranch Regional Management Plan (RMP)

As indicated in the EIR, the County adopted the Otay Ranch Subregional Plan (SRP) and Regional Management Plan (RMP), which together establish the Otay Ranch preserve system and set the CEQA mitigation requirements for participating projects, such as Village 13, for purposes of addressing biological impacts, including impacts to golden eagle. (DEIR, **Project Description,** pp. 1.05—1.0-9) For ease of reference, the EIR's description of these two plans is reproduced below:

> In the 1980s, the prevailing regulatory scheme was to focus on single species conservation and set aside patches of open space to accommodate sensitive species and their habitats. Otay Ranch sought to replace this approach by creating a large, contiguous preserve system to be professionally managed and funded in perpetuity. The Otay SRP provided for this managed preserve system through the adoption of the Otay Ranch RMP, designation of an 11,375-acre Otay Ranch Preserve, and establishment of the Otay Ranch Preserve Owner Manager (POM), funded in perpetuity through a series of assessment mechanisms.
>
> The 11,375-acre Otay Ranch Preserve was created concurrent with the development of Otay Ranch. For every "Developable acre" (as defined in Phase 2 RMP) of land approved for development, 1.188 acres of preserve land is conveyed to the designated POM. To date, more than 3,200 acres of preserve land have been offered for dedication to public ownership due to development of Otay Ranch.
>
> (Draft EIR, Section 1.0, **Project Description,** p. 1.0-5.)
>
> The Otay Ranch RMP is a comprehensive plan for the preservation, enhancement, and management of sensitive natural and cultural resources within Otay Ranch. The Otay Ranch RMP is a support document to and part of, the Otay SRP. Furthermore, the Otay Ranch RMP is the regulatory document governing sensitive lands within Otay Ranch, and is to be applied in lieu of the County Resource Protection Ordinance (RPO).
>
> (Draft EIR, Section 1.0, **Project Description**, p. 1.0-26.)

The EIR also explains that the Otay Ranch Preserve (which was established by the SRP and RMP in 1995) was incorporated into the County's MSCP and Subarea Plan, which were adopted in 1997. In addition, the Biological Technical Report for this Project, which is attached to the Draft EIR as **Appendix C-3,** provides the following additional information regarding the RMP and the Otay Ranch Preserve:

- The Otay Ranch RMP and the Otay Ranch Preserve serve as the basis for CEQA mitigation of biological impacts identified in the Otay SRP Program EIR (which include impacts to golden eagle).
- The Otay Ranch RMP contains conveyance procedures for dedicating parcels of land to the Otay Ranch Preserve.

- The RMP establishes an obligation for each new development to convey its "fair share" of the Otay Ranch Preserve, and that fair share equates to 1.188 acres of conveyed land for every 1 acre of land approved for development.
- A project's compliance with the RMP, including its fair share conveyance mandate, constitutes compliance with the County's MSCP.

(BTR, p. 153.)

With respect to the Project itself, the Biological Technical Report determined that the "overall number of Developable Acres subject to the RMP preserve conveyance ratio of 1.188 is 747.2 acres." (BTR, p. 153.) This results in a total conveyance obligation of 887.7 acres (747.2 acres x 1.188 = 887.7 acres). The project will accomplish this conveyance onsite. In other words, the applicant will not need to locate and acquire mitigation land offsite for purposes of adding it to the Preserve. Moreover, the MSCP "hardline" boundary to which the applicant has agreed actually creates a Preserve of approximately 1,089 acres. The difference between the RMP conveyance requirement – 887.7 acres – and the Project's MSCP hardline boundary – 1,089 acres – is approximately 201.3 acres and is available to meet conveyance or other preserve mitigation obligations for other Otay Ranch impacts.

Note also that the Preserve created by the RMP is especially sensitive to indirect effects of development near the Preserve boundary – so called "edge effects." To address these impacts, the RMP imposes a "brush management zone" (also known as a "fuel management zone") between development uses and the natural areas within the Preserve. (RMP, p. 1-26—1-27.) According to the RMP, the brush management zone will function as a "transitional area" that will assure compatibility between the Preserve and residential, commercial, and industrial uses." (RMP, p. 1-26.) The County determined that the brush management zone provided an adequate buffer against development-related edge effects and for that reason the RMP states that "there shall be no requirements for buffers outside the preserve system." (RMP, p. 1-27.)

San Diego County's Multiple Species Conservation Program

The MSCP is a comprehensive habitat conservation planning program adopted by the County Board of Supervisors on October 22, 1997. It addresses multiple species habitat needs and the preservation of native vegetation for an approximately 900-square mile area, of which 171,000+ acres have been included in a habitat preserve in southwestern San Diego County. (MSCP, p. 1-1.) It is one of three subregional habitat planning efforts throughout San Diego County. (MSCP, Fig. 1-1.) Local jurisdictions and special districts implement their respective portions of the MSCP through "subarea plans" and "implementing agreements."

The combination of the subregional MSCP, the Subarea Plans, and the Implementing Agreements serve as a multiple species Habitat Conservation Plan (HCP) under section 10(a)(1)(B) of the federal ESA and a Natural Communities Conservation Plan (NCCP) pursuant to both the California Natural Communities Conservation Act of 1991 (Cal. Fish & G. Code § 2800 et seq.) and CESA. (MSCP, p. 1-1.) Because the MSCP and subarea plans collectively constitute an NCCP, they effectively provide authorization for the take of special-status species, including those listed as endangered, threatened, or fully protected. (Cal. Fish & G. Code § 2835.)

The Implementing Agreement for the County MSCP Subarea Plan (i.e., the Implementing Agreement that governs preserve dedications in Otay Ranch) was executed by the County, the California Department of Fish and Wildlife, and the United States Fish and Wildlife Service (USFWS) on October 22, 1997. The Subarea Plan that covers Otay Ranch and, by extension, this Project, was approved by the County in 1998. Note also that the Subarea Plan requires the County to adopt a Resource Management Plan (RMP) for each "segment" within the subarea. The RMP establishes the mitigation ratios and other conditions that govern the preserve conveyances. The Otay Ranch RMP was approved in 1993. Each of these regional resource planning documents – the MSCP, the Subarea Plan, the Implementing Agreement, and RMP – is critical to the mitigation of Project impacts on golden eagle and other sensitive species. The four documents are discussed in greater detail below.

The 1997 MSCP Plan

The "biological goal" of the MSCP is to conserve and maintain the diversity, ecosystem functions, and persistence of extant populations of covered species through the preservation and adaptive management of large blocks of interconnected habitat and smaller areas that support rare vegetation communities. (MSCP, p. 1-5.) The MSCP anticipates that "fluctuations of species populations, including recolonization, will continue to occur" and that the "size (171,000+ acres), configuration, diversity, connectivity, and adaptive management of the preserve will allow the anticipated fluctuations to occur while still meeting the biological goal of the MSCP." (*Ibid*.)

The approved MSCP identifies 85 species that "will be *adequately conserved and 'covered'* by [the] plan (Table 3-4a)." (MSCP, p. 3-22, italics added.) The golden eagle is among the species "covered" under the MSCP. (MSCP, Table 3-4a.) Table 3-5 of the MSCP, which explains the rationale for including each species under the plan, states that coverage for the golden eagle is appropriate "because 53% of the potential foraging and nesting habitat will be conserved." The MSCP provides further that "[l]ocal populations [of golden eagle] are not critical to, and the plan will not adversely affect, the species' long-term survival." (MSCP, Table 3-5, p. 3-76.)

A breeding population of golden eagles exists in San Diego County, but the subregional data are incomplete and inconclusive with respect to current numbers and locations. The MSCP reported 11 golden eagle nesting territories fully within (or partially within) the MSCP plan area (i.e., the approximate 900 square mile area in southwestern San Diego County), and another 14 nesting territories primarily outside of the MSCP plan area. (MSCP, Table 3-5, pp. 3-75 - 3-76.) The MSCP further reported that the plan area supports "large blocks" of habitat conserved for potential foraging habitat.

The USFWS, in the Biological Opinion it prepared for the MSCP, also determined that most of the golden eagle's range occurs outside the County Subarea, and that, for this reason, the MSCP's impacts to golden eagle "are not significant to the species' long-term survival." (USFWS BioOp. (1998), p. 60.)

San Diego County Subarea Plan

Subarea plans are developed by participating jurisdictions/special districts and the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW), in order to implement the MSCP. The jurisdictions/districts submit their respective "subarea plans" to the USFWS and CDFW in support of applications for public and private project permits and other authorizations to impact listed

species and other species of concern. (MSCP, p. 1-1.) The San Diego County (County) Board of Supervisors adopted the County's Subarea Plan on October 22, 1997. The final plan was published in August 1998.

Together with the Implementing Agreement (discussed below), the County's Subarea Plan establishes the conditions under which the County, for the benefit of itself and of public and private landowners and other land development project proponents within its subarea boundary (i.e., Third Party Beneficiaries), will receive from the USFWS and CDFW certain long-term authorizations allowing the take of certain "covered" species incidental to land development and other lawful land uses authorized by the County. (County Subarea Plan (1997), p. 1-1.) The County's Subarea Plan is divided into three segments, one of which is the "South County segment." This segment, which includes the proposed Project site, encompasses Otay Ranch General Plan amendment approved by the County in October 1994. (County Subarea Plan (1997), pp. 1-3, 3-1-3-2, 3-13-3-16.)

The County's Subarea Plan also includes USFWS conditions related to the golden eagle. Those conditions provide that (a) no lethal take is authorized, (b) take of active nests is not permitted at any time, and (c) human disturbance of active nests must be avoided, including establishing a 4,000-foot disturbance avoidance area around active nests within the preserve. These same conditions are set forth in the County's Section 10(a) permit.

The Project complies with these conditions because (a) it will not result in lethal take of golden eagles, (b) it will not take any active golden eagle nest; and (c) there are no known nesting locations within 4,000 feet of the Project area. In addition, the Project site does not contain suitable nest substrates (i.e., large trees, rock outcrops, cliffs, or transmission towers).

The Subarea Plan conditions also authorize "harm" due to habitat loss "in the amount and locations specified in Table 3-5 of the MSCP Plan." (See County's Subarea Plan, USFWS Conditions, paragraph H.) Table 3-5 identifies 11 nesting territories in the plan area and then estimates the amount of habitat loss those territories will sustain once the MSCP Plan is fully implemented. Based on that information, Table 3-5 then predicts which of the 11 nesting territories is likely to remain viable following implementation of the plan. The proposed Project is located near what was then known as the "Rancho San Diego" nesting territory but which is now more often referred to as the "San Miguel Mountain" breeding territory. According to Table 3-5, "development under the plan will result in < 10 % loss of habitat in the nesting territory." Table 3-5 also determined that, based on this amount of habitat loss, the nesting territory "should remain viable." (MSCP, p. 3-75.) The Project complies with this condition because its impacts on golden eagle habitat are within the limits outlined in the plan and would not render any identified nesting territory non-viable. Moreover, the nest(s) on which the Rancho San Diego/San Miguel Mountain nesting territory is based have not been active since at least 2005 and appear to have been abandoned. One of the nests was destroyed in the 2007 Harris fire. Based on these facts, it appears that the Rancho San Diego/San Miguel Mountain nesting territory no longer exists. This does not mean, however, that golden eagle do not use or forage on the Project site. In fact, the Final EIR assumes that golden eagles do forage on site. Nor does it mean that golden eagles will never establish a new nest location on San Miguel Mountain. Rather, the data provided in the EIR and in this response simply reflect existing conditions at the project site, as required under CEQA Guidelines section 15125. They are not intended to address possible future changes to such conditions – other than those contemplated by

the proposed project and alternatives – as this would be speculative and contrary to the mandates of CEQA. (See CEQA Guidelines sections 15064 and 15145.)

County Implementing Agreement

Under the MSCP framework, implementing agreements between the entity responsible for the subarea plan (e.g., the County) and the wildlife agencies (i.e., USFWS and CDFW) memorialize the conservation and management responsibilities, guarantees of implementation, and corresponding authorizations for all participating parties. (*Ibid*.) Importantly, the implementing agreements contain "assurances" that the conservation/mitigation identified in the subarea plans and implementing agreements are to be implemented *without the USFWS and CDFW requiring* "the County or Third Party Beneficiaries [i.e., private project landowners] to commit additional land, additional restrictions, or additional financial compensation for covered species subject to incidental take beyond that provided pursuant [such implementing agreements]." (MSCP, p. 3-25; MSCP, Attachment A, Model Implementing Agreement, section 9.4, italics added.) In addition, if the USFWS and CDFW later determine that "additional land, additional land restrictions, or financial compensation beyond that required pursuant to the MSCP. . . are necessary to provide for the conservation" of such species, "the obligation for such additional measures shall *not* rest with the County or the Third Party Beneficiaries." (*Ibid.,* italics added.)

The County's Board of Supervisors approved its Implementing Agreement with the USFWS and CDFW on October 22, 1997. The County's Implementing Agreement includes golden eagle as a covered species; and golden eagle is also listed as a "species of concern" and a "covered species subject to incidental take." (See County Implementing Agreement, Exhibits C, D, and F.) The County's Implementing Agreement also includes the same "assurances" provisions as are found in the Model Implementing Agreement. (See County's Implementing Agreement, section 9.4, p. 12.)

In summary, because the proposed Project is covered by the MSCP, the County's Subarea Plan, and the Implementing Agreement, the golden eagles within the Plan area are deemed adequately conserved and covered by the MSCP and the implementing documents. Consequently, under the MSCP and implementing documents, impacts to the golden eagle have been mitigated by the habitat set-asides already built into the MSCP and the Otay Ranch Resource Management Plan (RMP), which was incorporated into the MSCP in 1997. In addition, the incidental "take" of golden eagle has been pre-authorized and does not require any further federal or state authorizations, including permits under the Bald and Golden Eagle Protection Act, provided such take, if any, does not exceed the conditions set forth in the MSCP. For this Project, however, no "take" of golden eagle is expected, nor is there any evidence that would support a determination that the proposed Project will "take" golden eagle. For this reason, the Draft EIR for the proposed Project, while acknowledging impacts to golden eagle foraging habitat, determined those impacts would be less than significant. This determination is supported by: (i) golden eagle's status as a Covered Species under the MSCP; (ii) the preservation of 1,015 acres of golden eagle foraging habitat on site; and (iii) the preservation of more than 140,000 acres of suitable golden eagle foraging habitat within the MSCP plan area as a whole. (See Draft EIR, Section 2.3, Biological Resources, pp. 2.3-22—2.3-23.)

Project Impacts on Golden Eagle

Impacts on Foraging Habitat

As the discussion above makes clear, the Otay Ranch RMP and the San Diego County MSCP Subarea Plan anticipated that this Project would disturb foraging habitat for the golden eagle. This impact, however, was to be mitigated by the Project's participation in the RMP and MSCP process, which requires the Project applicant to convey certain land into the Otay Ranch preserve. The EIR states that the Project site supports approximately 1,660 acres of habitat suitable for golden eagle foraging, such as open grassland, open coastal sage scrub, and relatively open chamise chaparral. (DEIR, p. 2.3-22.) Of these 1,660 acres, the Project would adversely affect approximately 620 acres plus an additional 25 acres of impacts within the Preserve, and would preserve 1,015 acres (61%). (DEIR, p. 2.3-22.) The Draft EIR then determined that "[w]ith implementation of the Otay Ranch RMP and associated conveyance of preserve land, impacts to golden eagle foraging habitat are considered ***less than significant*** due to the 1,015 acres of suitable foraging habitat preserved on-site." (DEIR, p. 2.3-22.)

The proposed Project's effects on such habitat are consistent with the impact assumptions made in the MSCP and RMP. Therefore, the impact is considered pre-mitigated under both plans.

Impacts on Golden Eagle Individuals and Nests

The MSCP, the RMP, and the County's section 10(a) permit prohibit lethal take of golden eagle individuals. The Project does not contemplate any such lethal take or any direct impact on individual golden eagles. The MSCP, RMP, and section 10(a) permit also prohibit disturbance of any active golden eagle nest or placement of any human-related improvement within 4,000 feet of any such nest. Because there is no eagle nest within 4,000 feet of the Project boundary (in fact, the nearest active nest is approximately 6 miles away), the Project complies with the prohibition.

Indirect Impacts on Golden Eagle

Indirect impacts – sometimes referred to as "edge effects" – include such things as spill-over lighting, noise, and other human-related disturbance that may disrupt existing biological resources. In this case, the County, through the RMP, designed the Otay Ranch Preserve expressly to reduce edge effects by (i) minimizing the amount of "edge" in proportion to interior habitat, (ii) creating adequate buffers between developed areas and preserve land, and (iii) providing fencing and signage to protect the Preserve from encroachment and intrusion. Therefore, if the Project complies with the RMP and conveys its fair share of land to the Preserve, the proposed Project's indirect impacts on all covered species, including golden eagle, would be deemed less than significant. Given these protections, and given the size of the Preserve and the amount of golden eagle forage habitat it contains, the County is confident that golden eagles will continue to use and forage in the Preserve lands as they have in the past.

Note also that the proposed Project includes a "Preserve Edge Plan" prepared pursuant to Policy 7.2 of the RMP. The proposed "edge plan area" consists of a 100-foot wide strip of land adjacent to the Preserve. The purpose of the Preserve Edge Plan is to identify appropriate uses next to the Preserve and impose measures to reduce edge effects. The Preserve Edge Plan was attached to the Draft EIR as **Appendix C-23**.

Cumulative Impacts

By definition and design, the RMP and MSCP are *regional* conservation plans that provide large, contiguous blocks of natural habitat to offset *regional* biological impacts. As such, they mitigate the cumulative impacts of participating projects, including those associated with the Village 13 project now under review. This is explained in the Biological Resources Technical Report (BTR), attached as **Appendix C-3** to the Draft EIR:

> Implementation of the proposed project would contribute to the cumulative loss of biological resources within Otay Ranch and the County of San Diego MSCP Subarea Plan. Impacts to sensitive resources are all identified and addressed by the Otay Ranch RMP and MSCP Subarea Plan for covered species and species addressed in the Otay Ranch RMP [which includes golden eagle]. The exceptions to these are the Quino checkerspot butterfly, vernal pools, and San Diego fairy shrimp, which are not covered biological resources.
>
> Both the Otay Ranch RMP and the MSCP Subarea Plan provide mitigation for cumulative impacts to biological resources. The Otay Ranch RMP and MSCP were specifically designed to ensure that the cumulative impacts to biological resources from development in this area, including the proposed project, are reduced to a ales-than-significant level.

(BTR, p. 159.)

For the reasons provided in the BTR, and in the RMP and MSCP Subarea Plan, the Project's cumulative impacts on golden eagle – a covered species under both plans – have been mitigated to a less than significant level. That is, the proposed Project does not make a cumulatively considerable contribution to a significant cumulative impact on golden eagle.

Compliance with the RMP and MSCP

The Project, if approved, would comply with the terms, conditions, and limitations of the RMP, MSCP, the County's Subarea Plan, and Implementing Agreement. For this reason, the Project would have a less than significant impact on the RMP, MSCP, the County's Subarea Plan, and the Implementing Agreement.

U.S. Geological Survey Data

Some of the comments on the Draft EIR indicate that ongoing golden eagle studies by the U.S. Geological Survey (USGS) show one or more pair of golden eagles forage on the Project site. In the opinion of the commenters, this information undermines the Draft EIR's finding that the Project's impacts on golden eagle would be less than significant. The County disagrees for the following reasons.

The U.S. Geological Survey (USGS) has been collecting tracking data for golden eagles in southern California since 2014. This is a multi-year effort that is not yet complete. On April 21, 2016, the USGS

released a portion of its golden eagle tracking data (USGS DATA Series 994), under the title "Biotelemetry Data for Golden Eagles (Aquila chrysaetos) Captured in Coastal Southern California, November 2014-February 2016."[1] A second set of data (USGS DATA Series 1051) was released on May 12, 2017, under the title "Biotelemetery data for golden eagles (Aquila chrysaetos) captured in coastal southern California, February 2016–February 2017."[2] The USGS intends to release more eagle tracking data as they become available, but there is currently no timetable for such releases. As indicated in the April 2016 and February 2017 USGS data release, the biotelemetry data was collected in collaboration with local, State, and other Federal agencies as part of a "multi-year survey and tracking program of golden eagles to address questions regarding habitat use, movement behavior, nest occupancy, genetic population structure, and human impacts on eagles." The USGS tracking data (USGS DATA Series 994) provides tracking data, covering 15 months, for 27 golden eagles that were trapped at various sites in Riverside, Orange, and San Diego counties and fitted with transmitters. The 1051 DATA Series report includes tracking data for 10 additional golden eagles for a total of 37 individuals. Neither of these documents include any analysis of the tracking data.

In April 2018, the USGS released an initial modeling analysis of the tracking data collected through 2017 (USGS Open-File Report 2018–1067). This report provided new macro-scale insight about the movement patterns of the tracked eagles across San Diego County in relation to urban development and general habitat features, but did not focus specific attention on eagle use of Proctor Valley and the former San Miguel Mountain breeding territory area. Without such focused analyses, the USGS tracking data, as currently represented in published reports, do not provide sufficient detail to address the Proposed Project's impacts on golden eagle beyond what is already presumed in the context of the MSCP.

Evidence of golden eagle foraging within the Project Area is neither new nor unexpected. Potential eagle foraging in the vicinity of the Project Area has been known since at least the mid-1990s – a point reiterated in the Draft EIR and in this response. For this reason, the MSCP Plan identified the Project Area among the MSCP areas that support golden eagle foraging.

Second, evidence of golden eagle foraging on the Project site is neither new nor unexpected. The County has been aware of potential eagle foraging in the vicinity of the Project site since at least the mid-1990s – a point reiterated in this EIR and in this response. For this reason, the MSCP counted the Project site among the MSCP areas that support golden eagle foraging. The USGS data released in April 2016 confirms what the MSCP assumed. It is important to note, however, that the MSCP and its certified Final EIR also anticipated that participating developments, such as the Proposed Project, would disturb or remove a certain portion of golden eagle foraging habitat. Nevertheless, the MSCP determined that the loss would not be significant, given the large amount of golden eagle forage habitat to be preserved regionally within the MSCP planning area as a whole. Specifically, the MSCP stated that "[t]his species [golden eagle] will be covered by the MSCP because 53% of potential nesting habitat will be conserved"

[1] Tracey, J.A., Madden, M.C., Sebes, J.B., Bloom, P.H., Katzner, T.E., and Fisher, R.N., 2016, Biotelemetry data for golden eagles (*Aquila chrysaetos*) captured in coastal southern California, November 2014–February 2016: U.S. Geological Survey Data Series 994, 32 p., http://dx.doi.org/10.3133/ds994.
[2] Tracey, J.A., Madden, M.C., Sebes, J.B., Bloom, P.H., Katzner, T.E., and Fisher, R.N., 2017, Biotelemetry data for golden eagles (*Aquila chrysaetos*) captured in coastal southern California, February 2016-February 2017: U.S. Geological Survey Data Series 1051, 35 p., https://doi.org/10.3133/ds1051.

(MSCP Table 3-5, p. 3-76). The MSCP also indicated that "[l]ocal populations are not critical to, and the plan will not adversely affect, the species' long-term survival" (MSCP Table 3-5, p. 3-76).

Third, the eagle specialists at H. T. Harvey & Associates determined that all known and potential golden eagle nesting areas – including the former nests on San Miguel Mountain – are approximately 3 miles from the nearest Project development boundary, and that the Project site is on the periphery of the eagles' foraging domains. And, as stated above, the nests associated with the "Rancho San Diego/San Miguel Mountain" nesting territory have been inactive since at least 2007, when they were either abandoned or destroyed by fire. Recently, the USFWS and BLM installed an artificial nesting platform near the former nest locations, but to date no eagles have elected to nest there. The USGS data released in April 2016 does not indicate that golden eagles have established or re-established any nest at Rancho San Diego/San Miguel Mountain. Again, however, even if golden eagles established a nest at the USFWS or BLM nesting platform, such a nest would be well outside the 4,000-foot impact buffer required under the MSCP and the County's section 10(a) permit.

The Village 13 Project includes a habitat preserve of approximately 1,089 acres, of which 1,015 acres is considered suitable golden eagle habitat, and is but one part of the much larger Subregional MSCP preserve system. The Project therefore contributes to the long-term conservation of golden eagle habitat within the MSCP plan area, which is what the County contemplated when it approved the MSCP and Subarea Plan in 1997. In short, the Project conforms to the MSCP and Subarea Plan and meets the conservation standards set forth in both. Moreover, the Village 13 Project recognizes that recreational activities, including hiking and biking, have the potential to reduce the viability of golden eagle foraging habitat. For this reason and to further minimize the potential impact of the Project in reducing golden eagle foraging habitat, the Project does not propose public trails or parks within the approximately 1,015 acres identified as suitable golden eagle habitat within the overall 1,089 acre preserve. Therefore, the Project's potentially significant impacts on golden eagle will be mitigated to less than significant levels.